

1 The Honorable Ricardo S. Martinez
2

3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE WESTERN DISTRICT OF WASHINGTON**

5 J.N.C. and J.D.C., by and through
6 their parents and legal guardians, PAUL Y.
7 CHUNG and IRIS J. CHUNG,

8 – and –

9 JOELLE G. CHUNG,

10 – and –

11 A.A.B. and A.H.B., by and through
12 their parents and legal guardians,
13 RICHARD D. BOGESS and
14 JANET L. BOGESS,

15 *Plaintiffs,*

16 v.

17 WASHINGTON INTERSCHOLASTIC
18 ACTIVITIES ASSOCIATION,

19 *Defendant.*

20 Civil Action No. 3:19-cv-05730-RSM

21 **PLAINTIFFS' PRETRIAL
22 STATEMENT**

23 **JURISDICTION**

24 The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1367.

25 **SUMMARY OF CLAIMS**

26 **I. The “Withdrawal Rule” Claims**

27 Pursuant to Counts II, IV, and VI of the Complaint, Plaintiff Joelle Chung seeks relief
28 based on WIAA’s application of its prior Rules 22.2.5 and 22.2.6 concerning withdrawal
29 from postseason competition. These rules generally prohibited players from entering post-
30 season competition unless they could participate in every level of play through the com-
31 pletion of the state championship event. An exception allowed athletes to withdraw for
32

1 reasons of “injury, illness or unforeseen events.” Dkt. 54-1 at 8. WIAA exercised broad
 2 discretion in applying the “unforeseen events” exception to allow athletes to withdraw for
 3 almost any reason, including getting “nails done” for “prom,” Dkt. 54-15 at 56:16-58:25;
 4 “band,” Dkt. 54-3 at 69; and a trip to Alaska, Dkt. 54-2 at 199. Other athletes were allowed
 5 to withdraw without giving any reason. *See, e.g.*, Dkt. 54-1 at 36. WIAA even justified one
 6 athlete’s withdrawal from the state tennis tournament so he could play in the state base-
 7 ball tournament, which had long been scheduled for the same weekend, concluding it was
 8 “unforeseen” that his baseball team would advance so far. Dkt. 54-1 at 39; Dkt. 54-5 at
 9 128:25-129:9; *see also* Dkt. 54-4 at 135:1-136:21 & Correction Sheet (*id.* at 78 of 78). In
 10 contrast, Plaintiff Joelle Chung was told that the possibility of her advancing far enough
 11 through the postseason to have a Sabbath conflict on the last day of the state tennis tour-
 12 nament did not qualify as “unforeseen.”

13 Plaintiffs claim that this discriminatory treatment violated the Free Exercise Clause
 14 (Count II), Article 1 § 11 of the Washington Constitution (Count IV), and Washington
 15 Revised Code § 28A.600.200 (Count VI). Because Plaintiff Joelle Chung was forced to
 16 withdraw from the district championship her junior year and from the entire postseason
 17 her senior year, she seeks (1) a declaration that application of prior Rules 22.2.5 and
 18 22.2.6 violated federal and state law; (2) a permanent injunction barring reinstatement
 19 of prior Rules 22.2.5 and 22.2.6; and (3) damages in an amount to be determined by a
 20 jury.

21 **II. The “Scheduling” Claims**

22 Pursuant to Counts I, III, VI, VII, and VIII, the Minor Plaintiffs seek relief from
 23 WIAA’s decision to schedule the final day of the 2A tennis tournament on their Sabbath
 24 with no accommodation for their religious observance if they advance that far. WIAA has
 25 broad discretion in initially scheduling the state tennis tournament. It also has broad
 26 discretion to accommodate Plaintiffs’ religious observance should they advance far
 27 enough in the tournament to have a conflict with their Sabbath. There are many ways

1 that WIAA could accommodate Plaintiffs' religious observance, including by moving the
 2 tournament to weekdays only; pivoting to a weekday-only schedule if any Minor Plaintiff
 3 qualified to advance to the state tournament; or rescheduling individual matches so that
 4 that any Saturday match for which a Minor Plaintiff qualified could be played before or
 5 after their Sabbath.

6 Notably, WIAA has never scheduled any events over a Sunday. It has scheduled mul-
 7 tiple state-level events—including the state golf tournament for at least the last 11
 8 years—exclusively on weekdays. Dkt. 54-22; Dkt. 54-7 at 38:9-14. And it has accommo-
 9 dated Saturday-Sabbath observers, or is willing and prepared to accommodate them, in
 10 various other sports. But WIAA is unwilling even to consider an accommodation for the
 11 Minor Plaintiffs.

12 The Minor Plaintiffs claim that this discriminatory treatment violates the Free Exer-
 13 cise Clause (Count I), Article 1, § 11 of the Washington Constitution (Count III), Wash-
 14 ington Revised Code § 28A.600.200 (Count V), the combined Religion Clauses (Count VII),
 15 and the Equal Protection Clause (Count VIII). Because WIAA has denied Minor Plaintiffs
 16 the ability to participate in the final day of the state tennis tournament, they seek (1) a
 17 declaration that WIAA's religious discrimination violates federal and state law and (2) an
 18 injunction requiring WIAA to schedule the 2A state tennis tournament to avoid a conflict
 19 with the Minor Plaintiffs' Sabbath or, alternatively, to grant a scheduling accommodation
 20 to allow the Minor Plaintiffs to complete Saturday matches outside of their Sabbath
 21 should they advance that far.

22 ISSUES OF LAW

23 I. Standing

24 Only the Minor Plaintiffs, and not Plaintiff Joelle Chung, have claims challenging
 25 WIAA's scheduling of the 2A State Tennis Tournament. In its May 10, 2021 Order deny-
 26 ing Plaintiffs' motion for summary judgment, the Court held that the Minor Plaintiffs
 27 lack standing. Dkt. 87 at 9-10. Plaintiffs filed a motion for reconsideration, including as

1 to standing, on May 24, 2021. Dkt. 89 at 1-2. If the Court denies reconsideration as to
 2 standing, all of the scheduling claims (Counts I, III, V, VII, and VIII) must be dismissed
 3 “without prejudice.” *Fleck and Assocs., Inc. v. City of Phoenix*, 471 F.3d 1100, 1106-07 (9th
 4 Cir. 2006). Absent standing, the scheduling claims cannot proceed to trial, because “the
 5 court lacks jurisdiction to address” claims for which no party can “demonstrate[] the req-
 6 uisite standing.” *Cal. Tow Truck Ass’n v. City and County of San Francisco*, 693 F.3d 847,
 7 866 (9th Cir. 2012); *Fleck*, 471 F.3d at 1107 (without standing, court is “powerless to reach
 8 the merits”).

9 **II. Free Exercise Claims (Counts I & II)**

10 To prevail on a Free Exercise claim, a plaintiff must demonstrate that his or her sin-
 11 cere religious practice is burdened by a law that is either not neutral or not generally
 12 applicable. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520,
 13 531 (1993). Once a plaintiff makes this showing, the government must show “that the
 14 challenged law satisfies strict scrutiny.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021).
 15 Strict scrutiny requires the government to show it has a compelling government reason
 16 for burdening the plaintiff’s religious practice and that it is using the least restrictive
 17 means possible. *Lukumi*, 508 U.S. at 521-22 (requiring “the most rigorous of scrutiny” in
 18 which the government’s policy “must be justified by a compelling governmental interest
 19 and must be narrowly tailored to advance that interest”). Thus, “so long as the govern-
 20 ment can achieve its interests in a manner that does not burden religion, it must do so.”
 21 *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021).

22 **A. Plaintiffs’ Burden**

23 **1. Sincerity**

24 As to sincerity, Plaintiffs need only show that their relevant beliefs are “sincerely held”
 25 and “rooted in religious belief.” *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (internal
 26 quotation marks omitted); *Callahan v. Woods*, 658 F.2d 679, 683-85 (9th Cir. 1981). This
 27 determination is a question of law for the court. *United States v. Seeger*, 380 U.S. 163,

1 185 (1965) (court’s “task … to decide whether the beliefs professed … are sincerely held
 2 and … religious”); *Luckette v. Lewis*, 15 Fed. App’x 451, 452 (9th Cir. 2001) (directing that
 3 “a clear finding of sincerity” be made by the district court). A court’s role in assessing
 4 sincerity is very limited because “[c]ourts are not arbiters of scriptural interpretation”;
 5 nor is it “within the judicial function and judicial competence to inquire whether [Plain-
 6 tiffs] correctly perceived the commands” of their faith. *Thomas v. Rev. Bd. of Ind. Emp.*
 7 *Sec. Div.*, 450 U.S. 707, 715-16 (1981). “Courts typically give credence to assertions of
 8 sincerely held religious beliefs in absence of any challenge to their sincerity or religious
 9 motives.” *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 1011 (9th Cir. 2013). Plaintiffs thus
 10 object to subjecting the issue of sincerity to a jury.

11 **2. Neutrality and General Applicability**

12 A determination of whether a law is neutral and generally applicable is a question of
 13 law for the court. *Fulton*, 141 S. Ct. at 1877 (a law is not generally applicable if it has “a
 14 mechanism for individualized exemptions” or “prohibits religious conduct while permit-
 15 ting secular conduct that undermines the government’s asserted interests in a similar
 16 way”); *Tandon*, 141 S. Ct. at 1296 (law not generally applicable if “any comparable secular
 17 activity” is treated “more favorably than religious exercise”); *Masterpiece Cakeshop, Ltd.*
 18 *v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1730-32 (2018) (finding of non-neutral-
 19 lity as a matter of law); *see also Lukumi*, 508 U.S. at 533; *Roberts v. Neace*, 958 F.3d 409,
 20 415 (6th Cir. 2020). Plaintiffs thus object to submitting this issue to a jury.

21 As to the “withdrawal rule” claims, Plaintiffs’ motion for summary judgment pre-
 22 sented undisputed evidence that former Rules 22.2.5 and 22.2.6 had categorial exceptions
 23 in that they allowed withdrawals for “injury” or “illness” and that they included a “mech-
 24 anism for individualized exemptions,” *Fulton*, 141 S. Ct. at 1877, in that they allowed
 25 withdrawals for “unforeseen events.” *See, e.g.*, Dkt. 54-01 at 8. The Court concluded that
 26 evidence of WIAA’s uneven enforcement raised a question of fact for the jury as to whether
 27 “strict scrutiny is triggered.” Dkt. 87 at 22. Plaintiffs’ motion for reconsideration on this

1 issue is still pending. If the motion is denied, Plaintiffs intend to reintroduce the evidence
 2 at trial and move the Court for judgment as a matter of law on this element of their claim.

3 As to the “scheduling” claims, Plaintiffs’ motion for summary judgment presented un-
 4 disputed evidence that WIAA has broad discretion regarding when it schedules interscho-
 5 lastic activities and that numerous state competitions are scheduled to take place entirely
 6 on weekdays. *See* Dkt. 53 at 7-8. Plaintiffs also submitted undisputed evidence that WIAA
 7 has previously exercised (or been prepared to exercise) its discretion to accommodate re-
 8 ligion. Dkt. 53 at 8-9. The Court concluded that whether these facts “subject[] [WIAA’s]
 9 scheduling policy to strict scrutiny review” is a question of fact for the jury. Dkt. 87 at 15.
 10 Plaintiff’s motion for reconsideration is still pending. If the motion is denied, Plaintiffs
 11 intend to reintroduce the evidence at trial and move the Court for judgment as a matter
 12 of law on this element of their claims.

13 **B. WIAA’s Burden**

14 **1. Compelling Government Interest**

15 Determination of whether the WIAA had a compelling governmental interest in dis-
 16 criminating against Plaintiff Joelle Chung is a question of law for the Court. *Peterson v.*
Minidoka Cnty. Sch. Dist. No. 331, 118 F.3d 1351, 1357 (9th Cir. 1997), *amended*, 132
 18 F.3d 1258 (9th Cir. 1997) (sufficiency of government’s alleged compelling interest is “a
 19 question of law, not a question of fact”); *Scott v. Rosenberg*, 702 F.2d 1263, 1274-75 (9th
 20 Cir. 1983); *United States v. Hardman*, 297 F.3d 1116, 1127 (10th Cir. 2002) (“whether
 21 something qualifies as a compelling interest is a question of law”). Plaintiffs thus object
 22 to submitting this issue to the jury.

23 “Rather than rely on ‘broadly formulated interests,’ a court making this determina-
 24 tion “must ‘scrutinize[] the asserted harm of granting specific exemptions to particular
 25 religious claimants.’” *Fulton*, 141 S. Ct. at 1881 (quoting *Gonzales v. O Centro Espírito*
Beneficente Uniao do Vegetal, 546 U.S. 418, 431 (2006)); *see also Holt v. Hobbs*, 574 U.S.
 27 352, 363 (2015) (applying compelling interest test “to the person” and requiring court “to

1 look to the marginal interest in enforcing" the challenged government action in that par-
 2 ticular context) (internal citations omitted). WIAA's evidence that it had a compelling
 3 governmental interest in discriminating against Plaintiff Joelle Chung was set forth in
 4 its response to Plaintiffs' motion for summary judgment. Plaintiffs' motion for reconside-
 5 ration asking the Court to reach this issue is still pending. If the motion is denied, fol-
 6 lowing reintroduction of the parties' evidence at trial, Plaintiffs intend to move the Court
 7 for judgment as a matter of law on this element of their claims.

8 **2. Least Restrictive Means**

9 Determination of whether WIAA has met the least restrictive means standard is a
 10 question of law for the Court. *United States v. Vasquez-Ramos*, 531 F.3d 987, 991 (9th
 11 Cir. 2008) (finding least restrictive means as a matter of law); *United States v. Friday*,
 12 525 F.3d 938, 949 (10th Cir. 2008) ("We now conclude, as other circuits have, that both
 13 prongs of RFRA's strict scrutiny test are legal questions."); *Lawson v. Singletary*, 85 F.3d
 14 502, 511-12 (11th Cir. 1996) ("pure question of law"). Plaintiffs thus object to submitting
 15 this issue to a jury.

16 "The least-restrictive-means standard is exceptionally demanding,' and the govern-
 17 ment bears the burden of showing 'that it lacks other means of achieving its desired goal
 18 without imposing a substantial burden on the exercise of religion by the objecting
 19 part[y].'" *Does v. Wasden*, 982 F.3d 784, 795 (9th Cir. 2020) (quoting *Holt*, 574 U.S. at 364-
 20 65); *Tandon*, 141 S. Ct. at 1296-97 ("narrow tailoring requires the government to show
 21 that measures less restrictive of the First Amendment activity could not address its in-
 22 terest"); *see also Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005) (government
 23 must "demonstrate[] that it has actually considered and rejected the efficacy of less re-
 24 strictive measures before adopting the challenged practice").

25 WIAA's evidence that it meets this standard was set forth in WIAA's response to Plain-
 26 tiffs' motion for summary judgment. Plaintiffs' motion for reconsideration asking the
 27 Court to reach this issue is still pending. If the motion is denied, following reintroduction

1 of the parties' evidence at trial, Plaintiffs will move the Court for judgment as a matter
 2 of law on this element of their claims.

3 **III. Washington Constitution, Article I, § 11 (Counts III & IV)**

4 To prevail on their claims under Article I, § 11 of the Washington Constitution, Plain-
 5 tiffs must show that (1) their sincere religious beliefs are (2) substantially burdened by
 6 the challenged action; WIAA then must show that it (3) has a compelling interest and
 7 (4) is using the least restrictive means to achieve that interest. *State v. Arlene's Flowers,*
 8 *Inc.*, 441 P.3d 1203, 1233 (Wash. 2019). The Court denied Plaintiffs' motion for summary
 9 judgment on their state constitution claims, but did not enter summary judgment in
 10 WIAA's favor. *See* Fed. R. Civ. P. 56(f)(1). Whether the elements of these claims were met
 11 is a question of law for the Court. Plaintiffs thus object to submitting these claims to a
 12 jury. If the Plaintiffs' pending motion does not lead to reconsideration of the Court's ear-
 13 lier ruling on these claims, the Court should finalize its ruling by entering summary judg-
 14 ment in WIAA's favor.

15 **IV. Washington Revised Code 28A.600.200 (Counts V & VI)**

16 Washington Revised Code § 28A.600.200 prohibits WIAA from discriminating based
 17 on "creed" "in connection with any function it performs." The Court denied Minor Plain-
 18 tiffs' motion for summary judgment on this claim, but did not enter summary judgment
 19 in WIAA's favor. *See* Fed. R. Civ. P. 56(f)(1). Whether the elements of this claim are met
 20 is a question of law for the Court. Plaintiffs thus object to submitting this claim to a jury.
 21 If the Plaintiffs' pending motion does not lead to reconsideration of the Court's earlier
 22 ruling on this claim, the Court should finalize its ruling by entering summary judgment
 23 in WIAA's favor.

24 **V. Religion Clauses (Count VII)**

25 The Religion Clauses require "that one religious denomination cannot be officially pre-
 26 fered over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). WIAA does not schedule
 27 state championship play on Sunday—the day of the week viewed by most other Christian

1 faiths as the Sabbath. Of the approximately 240 state championship events WIAA orga-
 2 nized for 2020-21 and 2021-22, none has included competition scheduled for Sunday.
 3 Whether the evidence of WIAA's historical preference for Sunday-Sabbath observers vio-
 4 lates the Religion Clauses is a question of law for the Court. Plaintiffs thus object to sub-
 5 mitting this claim to a jury and will move the Court at trial for entry of judgment as a
 6 matter of law.

7 **VI. Equal Protection Clause (Count VIII)**

8 Under the Equal Protection Clause of the United States Constitution, no state shall
 9 deny to any person the equal protection of the laws. This provision requires that similarly
 10 situated persons be treated similarly. Under this Clause, courts apply strict scrutiny to
 11 state action that interferes with a fundamental right, like the right to free exercise of
 12 religion. The Court denied Plaintiffs' motion for summary judgment on this claim, but did
 13 not enter summary judgment in WIAA's favor. *See* Fed. R. Civ. P. 56(f)(1). Whether the
 14 evidence of WIAA's historical preference for Sunday-Sabbath observers violates the Equal
 15 Protection Clause is a question of law for the Court. Minor Plaintiffs thus object to sub-
 16 mitting this claim to a jury. If the Plaintiffs' pending motion does not lead to reconsider-
 17 ation of the Court's earlier ruling on this claim, the Court should finalize its ruling by
 18 entering summary judgment in WIAA's favor.

19 **VII. Damages**

20 Plaintiff Joelle Chung is entitled to damages in an amount to be determined by a jury.

21 **WITNESSES**

22 Plaintiffs reserve the right to call any witness identified by WIAA and any witness
 23 necessary to the admissibility of an exhibit if the parties do not stipulate to admissibility.
 24 Where a witness has been deposed, the area of testimony will include all subjects covered
 25 in the deposition. Some of the witnesses identified may be called at trial using excerpts
 26 of their deposition in lieu of testimony as the Court's rules permit. Plaintiffs intend to call
 27 the following witnesses at trial:

1 1. Joelle Chung, c/o The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave.,
2 NW, Washington, DC: Joelle Chung will testify regarding the nature and sincerity of her
3 religious beliefs; her experience as a high school tennis player; her efforts to obtain a
4 religious accommodation from WIAA and WIAA's response; and her damages arising from
5 WIAA's infringement of her rights. She may also testify regarding any other subjects cov-
6 ered in her deposition.

7 2. J.N.C., c/o The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave., NW,
8 Washington, DC: J.N.C. will testify regarding the nature and sincerity of his religious
9 beliefs; his experience as a high school tennis player; and his efforts to obtain a religious
10 accommodation from WIAA and WIAA's response. J.N.C. may also testify regarding any
11 other subjects covered in his deposition.

12 3. J.D.C., c/o The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave., NW,
13 Washington, DC: J.D.C. will testify regarding the nature and sincerity of his religious
14 beliefs; his experience as a high school tennis player; and his efforts to obtain a religious
15 accommodation from WIAA and WIAA's response. J.D.C. may also testify regarding any
16 other subjects covered in his declaration. *See* Dkt. 54-18.

17 4. A.A.B. c/o The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave., NW,
18 Washington, DC: A.A.B. will testify regarding the nature and sincerity of his religious
19 beliefs; his experience as a high school tennis player; and his efforts to obtain a religious
20 accommodation from WIAA and WIAA's response. A.A.B. may also testify regarding any
21 other subjects covered in his deposition.

22 5. A.H.B., c/o The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave., NW,
23 Washington, DC: A.H.B. will testify regarding the nature and sincerity of his religious
24 beliefs; his experience as a high school tennis player; and his efforts to obtain a religious
25 accommodation from WIAA and WIAA's response. A.H.B. may also testify regarding any
26 other subjects covered in his declaration. *See* Dkt. 54-19.

1 6. Mick Hoffman, c/o Rockey Stratton, P.S., 3010 NE 182nd St., Lake Forest Park,
2 Washington, 98155: Mick Hoffman will be called to testify regarding the exceptions to
3 WIAA's former Rules 22.2.5 and 22.2.6; WIAA's discretion in applying, and its enforce-
4 ment of, former Rules 22.2.5 and 22.2.6; WIAA's rules regarding the scheduling of inter-
5 scholastic events; and WIAA's discretion in, and history of, scheduling interscholastic
6 events. Mr. Hoffman may also be called to testify regarding any other subjects covered in
7 his deposition.

8 7. Andrew Barnes, c/o Rockey Stratton, P.S., 3010 NE 182nd St., Lake Forest Park,
9 Washington, 98155: Andrew Barnes will be called to testify regarding the exceptions to
10 WIAA's former Rules 22.2.5 and 22.2.6; WIAA's discretion in applying, and its enforce-
11 ment of, former Rules 22.2.5 and 22.2.6; WIAA's rules regarding the scheduling of inter-
12 scholastic events; and WIAA's discretion in, and history of, scheduling interscholastic
13 events. Mr. Barnes may also be called to testify regarding any other subjects covered in
14 his deposition.

15 8. Cindy Adsit, c/o Rockey Stratton, P.S., 3010 NE 182nd St., Lake Forest Park, Wash-
16 ington, 98155: Cindy Adsit will be called to testify regarding the exceptions to WIAA's
17 former Rules 22.2.5 and 22.2.6; WIAA's discretion in applying, and its enforcement of,
18 former Rules 22.2.5 and 22.2.6; WIAA's rules regarding the scheduling of interscholastic
19 events; and WIAA's discretion in, and history of, scheduling interscholastic events. Ms.
20 Adsit may also be called to testify regarding any other subjects covered in her deposition.

21 Plaintiffs may also call the following witnesses to testify at trial:

22 1. Paul Chung, The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave., NW,
23 Washington, DC: Paul Chung may testify regarding the nature and sincerity of his chil-
24 dren's religious beliefs; his efforts to obtain religious accommodations for his children
25 from WIAA and WIAA's response; and Joelle Chung's damages. Mr. Chung may also tes-
26 tify regarding any other subjects covered in his deposition.

1 2. Iris Chung, The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave., NW,
 2 Washington, DC: Iris Chung may testify regarding the nature and sincerity of her chil-
 3 dren's religious beliefs; her efforts to obtain religious accommodations for her children
 4 from WIAA and WIAA's response; and Joelle Chung's damages. Ms. Chung may also tes-
 5 tify regarding any other subjects covered in her deposition.

6 3. Richard Boggess, The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave.,
 7 NW, Washington, DC: Richard Boggess may testify regarding the nature and sincerity of
 8 his children's religious beliefs and his efforts to obtain religious accommodations for his
 9 children from WIAA and WIAA's response. Mr. Boggess may also testify regarding any
 10 other subjects covered in his deposition.

11 4. Janet Boggess, The Becket Fund for Religious Liberty, 1919 Pennsylvania Ave.,
 12 NW, Washington, DC: Janet Boggess may testify regarding the nature and sincerity of
 13 her children's religious beliefs and her efforts to obtain religious accommodations for her
 14 children from WIAA and WIAA's response. Ms. Boggess may also testify regarding any
 15 other subjects covered in her deposition.

16 5. John State, 140 Southwest 8th Street, Chehalis, Washington: John State may be
 17 called to testify regarding Plaintiffs' religious sincerity; Plaintiffs' experience as high
 18 school tennis players; WIAA's rules regarding withdrawal from postseason competition
 19 and the scheduling of postseason events; and WIAA's application and enforcement of
 20 those rules. Mr. State may also testify regarding any other subjects covered in his depo-
 21 sition.

22 6. Michael Colbrese, c/o Rockey Stratton, P.S., 3010 NE 182nd St., Lake Forest Park,
 23 Washington, 98155: Michael Colbrese may be called to testify regarding the exceptions to
 24 WIAA's former Rules 22.2.5 and 22.2.6; WIAA's discretion in applying, and its enfor-
 25 ment of, former Rules 22.2.5 and 22.2.6; WIAA's rules regarding the scheduling of inter-
 26 scholastic events; and WIAA's discretion in, and history of, scheduling interscholastic
 27

1 events. Mr. Colbrese may also be called to testify regarding any other subjects covered in
 2 his deposition.

3 Plaintiffs reserve the right to call all of the foregoing witnesses as rebuttal witnesses
 4 on any topic on which they may have relevant information.

5 **EXHIBITS**

6 Plaintiffs reserve the right to offer into evidence any exhibit identified by the Defendants
 7 and to use unidentified exhibits for impeachment purposes or any purpose that can-
 8 not be reasonably anticipated in advance of trial. Plaintiffs reserve the right to offer into
 9 evidence any demonstrative or illustrative exhibit, whether or not identified in this Pre-
 10 trial Statement or the Pretrial Order. Plaintiffs may offer the following exhibits at trial:

- 11 1. Deposition Exhibits A-1 through A-109. *See* Dkt. 54-1 through 54-3.
- 12 2. Excerpts of the Deposition of Michael Colbrese dated June 23, 2020. Dkt. 54-4.
- 13 3. Excerpts of the Deposition of Mick Hoffman dated July 30, 2020. Dkt. 54-5.
- 14 4. Excerpts of the Deposition of Andrew Barnes dated August 19, 2020. Dkt. 54-6.
- 15 5. Excerpts of the Deposition of Cindy Adsit dated July 30, 2020. Dkt. 54-7.
- 16 6. Excerpts of the Deposition of Paul Y. Chung dated June 26, 2020. Dkt. 54-8.
- 17 7. Excerpts of the Deposition of Iris J. Chung dated June 25, 2020. Dkt. 54-9.
- 18 8. Excerpts of the Deposition of Joelle G. Chung dated June 24, 2020. Dkt. 54-10.
- 19 9. Excerpts of the Deposition of J.N.C. dated June 25, 2020. Dkt. 54-11.
- 20 10. Excerpts of the Deposition of Richard Boggess, dated June 24, 2020. Dkt. 54-12.
- 21 11. Excerpts of the Deposition of Janet L. Boggess dated June 25, 2020. Dkt. 54-13.
- 22 12. Excerpts of the Deposition of A.A.B. dated June 25, 2020. Dkt. 54-14.
- 23 13. Excerpts of the Deposition of John F. State dated August 24, 2020. Dkt. 54-15.
- 24 14. Excerpts of the Deposition of Jeffrey Johnson dated August 24, 2020. Dkt. 54-16.
- 25 15. Declaration of J.D.C. dated September 25, 2020. Dkt. 54-18.
- 26 16. Declaration of A.H.B. dated September 25, 2020. Dkt. 54-19.

1 17. Plaintiffs' Responses to Defendant Washington Interscholastic Activities Association's First Interrogatories and Requests for Documents Propounded to Plaintiffs, served
2 on January 13, 2020. Dkt. 54-20.

4 18. Documents produced by Defendant in discovery as WIAA001085-001208, Washington Interscholastic Activities Association's 2018-19 Official Handbook. Dkt. 54-21.

6 19. Documents produced by Defendant in discovery as WIAA001371-001381, state
7 championship tournament dates. Dkt. 54-22.

8 20. Copy of the 2018-19 Bound for State Regulations for tennis from the WIAA website,
9 accessed August 5, 2019. Dkt. 54-23.

10 21. Documents produced by Defendant in discovery as WIAA000965-001084, Washington Interscholastic Activities Association's 2017-18 Official Handbook. Dkt. 54-24.

12 22. List of State Championship Dates for 2020-21, along with the locations at which
13 the state championship tournaments were scheduled to be held from the WIAA website,
14 accessed August 28, 2020. Dkt. 54-25.

15 23. Documents produced by Defendant in discovery as WIAA005153, taken from Defendant's trial brief in *Jacobson v. WIAA*, No. 15-2-25734-0 SEA (Wash. Super. Ct.). Dkt. 54-26.

18 24. Documents produced by Defendant in discovery as WIAA005258-005259, Stipulation & Order of Dismissal Without Prejudice, *Jacobson, supra* (July 18, 2017). Dkt. 54-27.

21 25. Documents produced by Defendant in discovery as WIAA003514-003705, Washington Interscholastic Activities Association Financial Statements. Dkt. 54-28.

23 26. Documents produced by Defendant in discovery as WIAA002766-002767, 2019-20
24 State Championship Ticket Prices. Dkt. 54-29.

25 27. Documents produced by Defendant in discovery as WIAA001965. Dkt. 54-30.

1 Respectfully submitted this 13th day of July, 2021.
2

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8 *Attorneys for Plaintiffs*
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10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on July 13, 2021, the foregoing motion was served on all parties
12 via ECF.

13 /s/ Eric S. Baxter
Eric S. Baxter
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